



BEIJING BRUSSELS CHICAGO DALLAS FRANKFURT GENEVA HONG KONG LONDON LOS ANGELES NEW YORK SAN FRANCISCO SHANGHAI SINGAPORE SYDNEY TOKYO WASHINGTON, D.C.



# **The Fundamentals of Debt Financing**

## **The Role of Bond Counsel**

Presented by: Jim Copeland

---

## Historical Role of Bond Counsel as a Watchdog

---



- Role of Bond Counsel emerged in the late 1800s. To address numerous defaults of public debt and to increase confidence in the bonds they were investing in, investors hired Bond Counsel as an independent expert separate from the transaction to verify the validity of the bonds
- Bond Counsel was responsible for reviewing documents prepared by other lawyers after the bonds were issued to determine if the bonds were validly issued

---

## The Current Role of Bond Counsel as Counsel to the Issuer

---

- Today, the Issuer is Bond Counsel's client and is hired at the beginning of the transaction
- Responsibilities of Bond Counsel have expanded in response to this new representation as well as other developments in the municipal bond market, such as the role of tax exemption for municipal bonds

---

## The Current Role of Bond Counsel as Counsel to the Issuer

---

- The ultimate role of Bond Counsel is still to render an objective opinion on the validity of the bonds and the tax-exempt status of interest on the bonds

---

## The Bond Counsel Opinion

---

Bond Counsel opines as to 3 matters  
in the final opinion:

1. The bonds are legal, valid and binding obligations
2. Security for the payment of the bonds
3. Bonds are exempt from federal and state taxation

---

## Role of Bond Counsel in the Issuance Process

---

### Advise and Assist in the Authorization of the Bonds:

1. Analysis and assistance with structure (match goals of Issuer with financing structure)
2. Comply with Constitutional and Statutory Requirements (Election, Public Hearings, Notices, Resolutions, Validation Actions, etc.)

---

## Role of Bond Counsel in the Issuance Process (continued)

---

### Preparation of disclosure documents:

1. Preliminary Official Statement and Official Statement (limited responsibility for the Official Statement if only bond counsel vs. also serving as disclosure counsel)
2. Continuing Disclosure Certificate
3. Rating Agency Presentations (reviews for consistency with legal and disclosure documents)

---

## Role of Bond Counsel in the Issuance Process (continued)

---

### Reviews the Sale:

1. Reviews statutory requirements of whether sale of bonds is competitive or negotiated and drafts or comments on sale documents (notice of sale or purchase contract)
2. Ensures that sale results are within legal parameters



---

## Role of Bond Counsel in the Issuance Process (continued)

---

### Prepares Legal Documentation:

1. Legal Documents
2. Tax Certificate
3. Closing Certificates
4. Forms (CDIAC, UCCs)
5. Opinions

### Coordinates Closing Process

Ensures all documents that need to be received to close are delivered, signed and acceptable to all parties involved

---

## Post-Closing Role of Bond Counsel

---

Engagement of Bond Counsel typically ends at closing

Additional services Bond Counsel could render subject to agreement with Issuer:

1. Use of proceeds questions
2. Interprets documents and addresses document compliance questions
3. Assistance with a tax audit
4. Disclosure issues

---

## Tips on Obtaining Bond Counsel

---

1. RFPs
2. Referrals
3. Professional Associations (e.g. National Association of Bond Lawyers)

---

## Tips on Utilizing Bond Counsel

---

- Valuable resource: review collateral agreements, design disclosure procedures and bond programs, educate and train Issuer's staff for better compliance with the law and regulations, prepare and file continuing disclosure annual reports